

**APPROVED MINUTES
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, FEBRUARY 12, 2008**

4:30 P.M. SPECIAL COUNCIL MEETING (Study Session) - Revised plans for Redwood Square (Town Center Redevelopment Project)

5 P.M. SPECIAL COUNCIL MEETING (Study Session) - Process to recruit and select the next city Manager

7 P.M. REGULAR MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Parks and Recreation David Lewis
Director of Public Works Marvin Rose
Principal Programmer Analyst Helen Kwan
City Clerk Gail Borkowski

PUBLIC ANNOUNCEMENTS

Councilmember Howe announced that author Bo Caldwell will speak about her book, *The Distant Land of My Father*, at the Sunnyvale Public Library on Thursday, February 21, 2008, at 7 p.m. Caldwell's book is the recommended selection for Silicon Valley Reads 2008.

Josh Salans announced that the Full Circle Farm project will plant the first of their 105 orchard trees and members of the public are welcome to assist with the plantings.

CONSENT CALENDAR

Councilmember Whittum pulled Item 1.D. and 1.F.

Vice Mayor Hamilton moved, and Councilmember Howe seconded, approval of the consent calendar with the exception of Items 1.D. and 1.F.

Approved by Council as revised on February 26, 2008

Vote: 7-0

1.A. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.B. RTC 08–038 List of Claims and Bills Approved for Payment by the City Manager – List No. 386 & 387

Staff Recommendation: Council reviews the attached list of bills.

Contract Items

1.C. RTC 08–039 Award of Contract for Miscellaneous Water Meters (F0712-55)

Staff Recommendation:

- Council awards a one-year contract, in substantially the same form as the attached draft purchase order, to Elster AMCO Water Incorporated for the purchase of water meters, and
- Council delegates authority to the city manager to exercise an option to extend the contract for two additional one-year periods if in the City's best interest to do so.

1.D. RTC 08–037 Award of Bid No. F0710-40 for Tee Renovation at the Sunnyvale Golf Course and Approval of Budget Modification No. 31

Councilmember Whittum stated he pulled this item because he noticed that the tee renovation is a costly expense which is coming at a time that the City is making difficult financial choices. Councilmember Whittum inquired if the \$342,000 expense for this renovation could be deferred until Council has an opportunity to review the budget in May 2008.

Director of Parks and Recreation David Lewis stated this is a capital project and its implementation would not have any bearing on the current operating budget. Director Lewis stated this project was approved and funded by Council because the renovation is needed due to the condition of the tee complexes at Sunnyvale Golf Course. The current condition of the tee complexes at the course is affecting continued play by golfers, which ultimately affects this source of revenue for the City.

City Manager Amy Chan stated the financial situation is based on a 20-year budget. Should Council decide not to do the project, then there would be cost savings; however, deferring it from one year to the next could potentially cost more due to increases in construction and landscaping.

Vice Mayor Hamilton inquired how large each tee complex is and Director Lewis stated the total of all 18 tee complexes equals about seven acres.

Councilmember Swegles stated he is aware of golfers who do not want to use the course any longer due to its condition, which in turn is affecting the City's current revenue. Councilmember Swegles urged his colleagues to approve this project.

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Public hearing opened at 7:09 p.m.

A member of the public stated \$342,000 for the golf course repair is an unnecessary expense, especially in times when cities and counties are searching for revenue and making cuts. The member of the public stated, however, he would support this project if the golf fees would offset this expense within a few years at which time the City would then begin to receive revenue.

Public hearing closed at 7:16 p.m.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, approval of staff recommendation:

- Council awards a contract, in substantially the same form as the attached draft and in an amount not to exceed \$342,000, to Colony Landscape and Maintenance Incorporated for tee renovation at the Sunnyvale Golf Course, and
- Council approves Budget Modification No. 31 in the amount of \$94,000 to provide additional funding for City staff to purchase turf and tee mix directly as required.

Councilmember Howe explained this project has already gone through the budget process and the money for this project will come from funds generated by the golf course and not out of the City's General Fund. The funding for this golf course renovation will come out of the Park Dedication Fund.

VOTE: 6-1 (Councilmember Whittum dissented)

1.E. RTC 08-034 Authorization to Modify an Existing Contract for Vehicle Fuel (F0712-58)

Staff Recommendation: Council authorizes a one-year extension of an existing purchase order with Petro-Diamond Incorporated, in substantially the same form as the attached draft change order, for the purchase of unleaded gasoline for City vehicles.

1.F. RTC 08-047 Award of Request for Proposals No. F0707-06 for Architectural Engineering and/or Landscape Architect Services for Plaza Del Sol – Phase II

Councilmember Whittum stated he lives within 500 feet of this project and therefore he will recuse himself. Councilmember Whittum stated his conflict with this project is financial; however, he would like to make a public comment. Councilmember Whittum inquired if he could make his public comment from the dais. City Attorney Kahn stated he previously sent an e-mail to Councilmember Whittum stating that he did not have to recuse himself from this matter.

Councilmember Whittum stated the project cost is high and he supports asking staff to downscale this project and return to Council with a new plan which includes serviceable restroom facilities. Councilmember Whittum stated given that the project is near his home, he will abstain on general grounds.

Public hearing opened at (time not recorded).

No speakers.

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Public hearing closed at (time not recorded).

MOTION: Councilmember Howe moved, and Vice Mayor Hamilton seconded, to approve the staff recommendation:

- Council awards a contract, in substantially the same form as the attached draft and in the amount of \$709,743, to Royston, Hanamoto, Alley and Abey (RHAA) for consultant service related to design of Plaza Del Sol – Phase II, and
- Council approves a design contingency in the amount of \$106,461.

VOTE: 6-1 (Councilmember Whittum dissented)

Councilmember Whittum stated he made an error as he wished to abstain from voting on this item, not dissent. City Attorney Kahn stated once a vote has been taken, it is a matter of record and the vote would need to be retaken by the entire Council in order for Councilmember Whittum to change his vote. City Attorney Kahn reminded Councilmember Whittum that he did not need to recuse himself.

Other Items

- 1.G. No. 2864-08 Adoption of Ordinance No. 2864-08 Amending the Precise Zoning Plan, Zoning Districts Map, to rezone 54 parcels in Subdivision Tract 1910 from R-1 (Low Density Residential) to R-1/S (Low Density Residential/Single Story Combining) Zoning District**

Staff Recommendation: Council approves second reading of Ordinance No. 2864-08.

- 1.H. No. 2865-08 Adoption of Ordinance No. 2865-08 Amending the Precise Zoning Plan, Zoning Districts Map, to rezone certain property located at 1202-1204 Cortez Drive and 189-191 South Bernardo Avenue from R-3 (Medium Density Residential) to R-3/PD (Medium Density Residential/Planned Development) Zoning District**

Staff Recommendation: Council approves second reading of Ordinance No. 2865-08.

- 1.I. No. 2866-08 Adoption of Ordinance No. 2866-08 Amending the Precise Zoning Plan, Zoning Districts Map, to rezone certain property located at 185 South Bernardo Avenue from R-3 (Medium Density Residential) to R-3/PD (Medium Density Residential/Planned Development) Zoning District**

Staff Recommendation: Council approves second reading of Ordinance No. 2866-08.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Bonnie Lloyd stated her neighbor painted his house orange and she is upset with how the home color is affecting the neighborhood. Lloyd inquired if the City has an ordinance against painting a home this color. Director of Community Development Hanson Hom stated the zoning code does not regulate house paint colors for residential homes. Lloyd inquired if the City should have an ordinance against

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painting homes colors that do not blend in with the neighborhood. Councilmember Lee stated he previously inquired if residential design guidelines could be instituted and staff explained to him that such guidelines could cause first amendment issues. City Attorney Kahn stated the color a person paints their house is an owner's property right and is not something cities regulate. City Attorney Kahn stated the City of Sunnyvale does not have such an ordinance and neither do most cities.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **RTC 08-046 Request by staff for Continuance of 2007-0754 – Study Issue: Parking Requirements for Residential and Commercial Developments. A Review of the City's current parking requirements on commercial and multi-family (townhomes, condominiums, apartments) housing projects, and parking requirements needed for future developments.**

Mayor Spitaleri stated staff has required a continuance on this item.

Public hearing opened at 7:20 p.m.

No speakers.

Public hearing closed at 7:20 p.m.

MOTION: Councilmember Swegles moved, and Vice Mayor Hamilton seconded, to approve the staff recommendation: Council continues this item to February 26, 2008.

VOTE: 7-0

Vice Mayor Hamilton suggested that the agenda be changed to hear Item 6 next due to the time-sensitive nature of the item. Vice Mayor Hamilton explained that a meeting will be held tomorrow regarding this item.

Councilmember Whittum objected to moving this item because there are many members of the public who are waiting to hear Item 3.

MOTION: Vice Mayor Hamilton moved and Councilmember Howe seconded to adjust the Council agenda in order that Item 6 will be the next item heard by Council.

Vice Mayor Hamilton stated she is aware there is a large amount of public members waiting to speak on Item 3; however, Item 6 should not take very long and she is concerned that this item might be continued due to the length of tonight's meeting. Vice Mayor Hamilton further explained that a meeting will be held tomorrow morning regarding this item and it is important that Council hear the item tonight.

VOTE: 5-2 (Councilmembers Moylan and Whittum dissented)

6. **RTC 08-040 Consider Selection for a Developer for the Development of Affordable Senior Housing at 660 S. Fair Oaks**

Director of Community Development Hanson Hom presented the staff report.

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Councilmember Whittum inquired as to the financial impact of this project to the City and Director Hom stated he is unable to determine the actual financial impact as this project is under negotiations with the county. Councilmember Whittum confirmed that the actual financial question will come back to Council for action at a later date. City Attorney Kahn stated due to the City currently being involved in negotiations with the county, the financial terms are subject to closed session and when the terms are finalized, they will come back to the Council in open session for final Council action.

Councilmember Whittum inquired if it was accurate that if someone is not making \$22,000 a year, they would not be able to get into one of the units. Director Hom stated the \$22,000 or 30 percent is the maximum income for the units that are set aside for that program.

Public hearing opened at 7:28 p.m.

No speakers.

Public hearing closed at 7:28 p.m.

MOTION: Councilmember Howe moved, and Councilmember Lee seconded, to approve Alternative 1: Council selects Mid-Peninsula Housing Coalition as the developer and authorizes the city manager to prepare a memorandum of understanding for City Council approval for development of an affordable senior housing project at the county clinic site at 600 S. Fair Oaks Ave.

Councilmember Howe stated this program assists with a tremendous need within the community for housing that can serve extremely low-income seniors and is a good partnership between the county, City and a nonprofit.

Councilmember Lee commended staff on working with the county to identify a location and creative solution in working with the county to make this project happen for seniors. Councilmember Lee urged his colleagues to vote in favor of this project.

VOTE: 7-0

3. RTC 08-048 Mary Avenue Extension Project – Consideration of Alternatives for Completing the Environmental Review Process and Approval of Budget Modification No. 33

Transportation and Traffic Manager Jack Witthaus presented the staff report. Manager Witthaus stated there was a labeling mistake on the staff report in that Attachment A should be labeled as “AM peak hour,” not “PM Peak hour.”

Councilmember Whittum inquired what “recirculation of Draft Environmental Impact Report (DEIR)” meant, and Manager Witthaus explained that it would be the recirculation of a revised DEIR. Manager Witthaus stated the revision would be largely based on the comments received to date on the initial Environmental Impact Report (EIR).

Councilmember Whittum asked since Manager Witthaus does not believe there will be substantial new information, then who determines whether evidence is substantial. Manager Witthaus stated from a technical standpoint, it is determined by staff in the context of what the California Environmental Quality Act (CEQA) defines as substantial new information.

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Councilmember Whittum asked the city attorney under the substantial evidence standard, whose finding makes the evidence substantial in an EIR. City Attorney Kahn stated that Council's role is to review the staff recommendation for the certification of the final EIR. At that point, Council would either certify the final EIR which would imply that there was substantial evidence to support it or, if Council did not certify it, they would make the finding that there was not substantial evidence.

Councilmember Whittum inquired if Council is able to not accept the results of a traffic study and City Attorney Kahn explained that the action would not be to reject a certain portion; rather, it would be whether or not to certify the final EIR.

Councilmember Whittum inquired if Council would be able to make the finding, after weighing the evidence, that a bridge at the end of Mary Avenue would increase traffic. City Manager Chan stated Council may request additional information after receiving the EIR. City Manager Chan stated after Council reviews all the information presented for consideration, Council may then decide whether or not to certify the final EIR.

Councilmember Swegles confirmed with Manager Witthaus that utilizing highway 85 off Ellis Street was not looked at in the DEIR because Ellis Street is in Mountain View and is not a project that the City could pursue.

Councilmember Swegles confirmed that staff did not look at the possibility of widening the frontage road (Moffett Park Drive) because there are right-of-way constraints due to the freeway and the west channel. Manager Witthaus stated it would be physically impossible to widen that roadway. Director of Public Works Marvin Rose stated the EIR is not before Council this evening and therefore it is difficult to discuss the details without the document. Director Rose stated staff is looking for Council's direction on the EIR process.

Vice Mayor Hamilton inquired what level of detail the enhanced response would contain compared to the analysis that has been done on the other alternatives in the draft. Manager Witthaus stated the enhanced response would include a 100 percent detailed analysis of the alternatives received from the public comments received. Vice Mayor Hamilton confirmed that the analysis would be the same but would be on a different set of items.

Public hearing opened at 7:49 p.m.

David Cohen stated he opposes the Mary Avenue Extension Project and cited his reasons. Cohen stated he also opposes any change in parking restrictions or resident parking.

Glenn Hendricks, member of the Personnel Board, but speaking on his own behalf, stated he supports the staff recommendation but would like to see clarification between the definitions of what is a comprehensive versus a technical response. Manager Witthaus explained that some letters received are not relevant to the project being analyzed and per the CEQA guidelines those letters would not need a response. However, staff is proposing an enhanced analysis which would attempt to give responses to every question or issue posed from the comments received. Hendricks requested the motion include the broader aspect of the enhanced analysis because the technical nature of the EIR does not address the majority of the issues that are being raised.

Debbie Staats stated the DEIR did not address most of the Sunnyvale West resident

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concerns. Staats stated she supports expanding the DEIR to include all of the public comments and as many alternatives as possible.

Councilmember Whittum questioned if Staats was in favor of a revised DEIR which would focus on a different preferred alternative than a vehicle bridge. Staats stated she supports an enhanced EIR revised to address all comments supplied by the residents.

Josh Salans stated he supports dropping the bridge entirely (Alternative 9).

Staats went to the podium and stated she was not aware dropping the project was an option and would like Council to know she supports that option.

Councilmember Whittum inquired if an alternative would be acceptable and Salans stated that she supports dropping this project and then revisiting the existing issues.

Mary Olmstead stated she is against the entire project and would like to see the project dropped.

Gopal Patangay stated he is a member of Sunnyvale West Neighborhood Association and found overwhelming support in the neighborhood for dropping this project. Patangay questions why the City is spending money on a project that is not acceptable to the residents or good for the City. Patangay stated he supports Alternative 9 and does not want the City to spend any more money on this project.

Geeta Patangay stated she supports building a green Sunnyvale and urged Council to drop the proposed bridge project on Mary Avenue.

Patrick Grant proposed Council direct staff to limit the EIR and throw out some options.

Peter Cirigliano stated the bridge project is inevitable and the alternative of not doing anything will put the area in a worse situation. Cirigliano stated the alternatives offered in the staff report each offer a time delay; however, each delay is associated with an increasing cost. Cirigliano stated he supports moving forward with the cheapest and quickest option and not delaying any further. .

Jeannette Hayden stated concerns over increased traffic on Mary Avenue resulting from this project.

Dan Hafeman urged Council to consider Alternative 10 and direct staff to return with another design. Hafeman stated this project will discourage use of the areas freeways and encourage the use of the surface streets which in turn will increase traffic. Hafeman urged Council to make policy decisions based on the reasonableness of the project and the engineering alternatives that might exist.

Councilmember Whittum questioned Hafeman whether he would be in favor of a revised DEIR if it were to focus on a different alternative other than a vehicle bridge. Hafeman stated he is in favor of bicycle and electrical vehicle access to the towers. Hafeman stated single passenger cars should be channeled onto the freeways.

Kerry Haywood, Executive Director of Moffett Park Business and Transportation Association, expressed the association's support for the Mary Avenue extension project.

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Eleanor Hansen stated the DEIR and public comments should be looked at prior to any decision being made. Hansen stated she supports Alternative 9 and should it not be approved, she would then support Alternative 1.

Julie Norton stated she is appealing to Council to consider Alternative 9 or 10. Norton stated she would like Council to look from a global perspective as to what is happening in and around the Sunnyvale area.

Jeanne Yeager stated she supports Alternative 9. Yeager stated she also supports Council directing staff to plan in association with regional, state and federal traffic planning authorities so as to direct an efficient, modern, traffic management plan that will answer the needs of the Moffett Park Builders and additionally be responsible to the Sunnyvale residents.

Gary Vercellino stated he is against the Mary Avenue extension and spoke about safety issues for pedestrians and school children. Vercellino stated he is in favor of Alternative 9 but if the bridge has to move forward, he would then like to see that the overpass is accessible only from highway 237.

Public hearing closed at 8:26 p.m.

Vice Mayor Hamilton confirmed with Manager Witthaus that the CEQA purpose of looking at alternatives for completing the EIR is to see whether alternatives exist that could meet the purpose and needs of the project and better reduce the significant negative environmental consequences. Manager Witthaus stated staff heard about a lot of other alternatives through citizen comments and staff is proposing to go beyond the CEQA requirements and develop more information regarding the alternatives in order to assist with the decision making process.

Vice Mayor Hamilton confirmed with Manager Witthaus that it was possible that the City could have gone into the EIR with Mary Avenue as the preferred project, but during the process staff could have found that one of the alternatives was environmentally superior to the Mary Avenue project.

Councilmember Swegles stated he has traveled Mary Avenue at different parts of the day and each time he found that the traffic lights on Mary Avenue were not timed as well as on Mathilda Avenue. Councilmember Swegles inquired if that situation would be corrected with the overpass. Manager Witthaus stated at the current time, the City does not coordinate the traffic signals along Mary Avenue; however, the City is currently installing interconnection equipment along Mary Avenue (from El Camino to Evelyn).

Councilmember Whittum inquired if Council is able to direct staff to consider a preferred alternative to do something other than an over crossing. Manager Witthaus stated the project currently being considered is a roadway connection project within the City's General Plan. Manager Witthaus stated for the City to study something that is not a roadway connection project requires new planning rather than environmental impact reporting. Manager Witthaus stated however, the City is looking developing information on alternatives to the roadway connection project and staff is proposing to look at alternative transportation facilities in the alternatives discussion.

Councilmember Whittum stated the staff report includes the ability for Council to request that

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staff reconsider the General Plan. Councilmember Whittum stated it is his understanding that Alternative 9 includes the possibility of Council directing staff to revise the General Plan to eliminate the overpass. Councilmember Whittum stated he is suggesting that within the EIR process, Council could direct staff to give consideration to a different alternative. Staff could then return to Council with a recommendation based on having evaluated the alternative with respect to the original. Councilmember Whittum confirmed with Manager Witthaus that it is possible for Council to direct staff to consider alternatives to a vehicle bridge.

Vice Mayor Hamilton inquired if Council were to choose another alternative, would the current EIR suffice or would another EIR be needed? Manager Witthaus explained that a new EIR process would be required and staff would need to review the Land Use Plan, Transportation Plan, and the environmental documentation supporting those documents, because the Mary Avenue project is integral to the City's Land Use Plan.

Councilmember Whittum asked if Council would be able to direct staff to return to Council with a plan to revise the General Plan to remove the Mary Avenue bridge; to consider a bike bridge along with the environmental impacts together with other features of the plan. Councilmember Whittum stated it is commonplace in the EIR process to find that an alternative is better and that the EIR document, when certified, is adequate for the alternative and no additional EIR needs to be done. City Attorney Kahn confirmed that the final EIR can consider different alternatives and Council could find an alternative to be preferable. City attorney explained that should the alternative be selected over the preferred project, it would require a new EIR directed at that particular project. Councilmember Whittum stated that a revised EIR could be accepted as a final EIR.

Councilmember Whittum asked the city attorney if Council could direct staff to pursue a bike bridge as a preferred alternative and that the alternative should include other features as determined by staff to meet purpose and need. City Attorney Kahn stated Council could not change the EIR so that the new preferred project is the bike bridge as the new alternative. City Attorney Kahn stated Council can request that the item come back as one of the alternatives being studied in the environmental impact report. At that point, Council could direct staff to look at the new project as the focus of a new EIR.

City Manager Chan stated this evening, Council has nine alternatives to choose from; however, if Council is interested in providing staff with another direction, then the time to do that is when the final EIR comes back to Council. City Manager Chan stated if Council's alternative is substantially different than the preferred alternative then a different process will be needed including a new EIR. City Manager Chan stated the focus this evening is when Council would like to have the report to come back to them.

MOTION: Vice Mayor Hamilton moved, and Councilmember Moylan seconded, to approve Alternative 4: Council directs staff to provide "enhanced" responses to comments on the Mary Avenue Extension DEIR that comprehensively address comments, provide a 10-day public review period prior to Council consideration of document certification, include a peer review and execute Budget Modification No. 33 in the amount of \$85,000.

Vice Mayor Hamilton stated she is trying to solve the problem of getting traffic in and out of the area and includes the additional alternatives brought about by public comments. Vice Mayor Hamilton stated currently she does not have enough information on this project and the additional analysis will assist her decision.

Councilmember Moylan stated Council has several options and spoke in favor of Alternative 4. Councilmember Moylan stated some of the other alternatives add on a 45 day public review period which seems unnecessary due the extended comment period and the thorough engagement from the community.

Councilmember Moylan explained that he is not presently in favor of Alternative 9 because all the data has not been reviewed yet including all the ideas from the public. Councilmember Moylan stated once the data is received, then Council can make an informed decision. Councilmember Whittum stated he will vote against the motion and objects to not being asked questions without the ability to view the resident comments.

Councilmember Whittum stated where several alternatives are available, it is appropriate for the community to request that Council consider one or two of the alternatives. Councilmember Whittum stated he does not see the City considering the alternatives, rather he sees the City moving toward an overcrossing. Councilmember Whittum stated the City does not apply its own standards to its own neighborhoods. Mary Avenue currently does not meet the standards in the General Plan for residential development due to noise levels. Councilmember Whittum stated he will be voting against this motion and further explained there are alternatives that he would endorse; however, they are not listed in the report.

Councilmember Swegles stated he will not support the motion due to the cost factor and would prefer to look at Alternative 2 which would allow a peer review and is less expensive.

Councilmember Swegles responded to a member of the public's earlier comment about Council all wearing black this evening and explained that it was not meant to be a statement about any decisions made, rather it was in honor of his father who recently passed away.

Councilmember Lee stated he is not able to support the motion due to not allowing the 45 day public review period. Councilmember Lee noted that the longer review did not affect the cost and he does not feel this is an issue that Council should move too quickly on given the amount of public interest in this project. Councilmember Lee stated another concern of his is regarding traffic mitigation and feels a bike option is an important aspect to look at for this bridge.

VOTE: 4-3 (Councilmembers Whittum, Swegles and Lee dissented)

Mayor Spitaleri called for a short recess at 8:55 p.m.

Mayor Spitaleri reconvened the Council meeting at 9 p.m.

4. RTC 08-049 Jay Paul Company Request for Release of "H Street Reservation" and Removal of H Street Alignment as an Alternative for Mary Avenue Extension

Vice Mayor Hamilton disclosed she met with the developer in January 2008.

Councilmember Swegles disclosed he met with the applicant.

Councilmember Whittum disclosed he met with the developer.

Councilmember Lee disclosed he spoke with the developer a month ago by phone.

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Councilmember Howe disclosed he met with the developer and other members of the public regarding this item.

Councilmember Moylan disclosed he spoke with the developer over the phone.

Mayor Spitaleri disclosed he had a phone conversation with the applicant.

Transportation and Traffic Manager Witthaus presented the staff report.

Public hearing opened at 9:06 p.m.

Councilmember Lee confirmed that Lockheed still owns land down to 11th Avenue, but they have sold one of the parcels north of 11th Avenue.

Councilmember Lee confirmed that in the context of the draft EIR on the Mary Avenue Extension project, staff has not received any comments against removing the "H Street Reservation".

Jay Paul, applicant, stated he has previously made his position clear and emphasized again the importance of this project. Paul explained that Lockheed has no objections. Paul stated the analysis pointed out that the H Street is not a preferred solution regardless of what occurs on Mary Avenue.

Councilmember Swegles inquired if Paul agreed with the staff recommendation. Paul stated he did not know what was entailed in the staff recommendation; however, the indemnification that staff is requesting is an unfair burden to place on the Jay Paul Company. Paul stated he would approve of a limit on what his company might have to pay, but he does not agree with an open indemnification as that is not reasonable. Paul explained that this project was done with the full understanding that the Mary Avenue overpass may never be built.

Councilmember Moylan explained that the staff recommendation is for Jay Paul Company to indemnify the City from any additional costs or impacts to the City arising from the release of the H Street Reservation prior to the certification of the final EIR. Councilmember Moylan explained this would not allow any challenge to the EIR, rather only to any piece of the EIR that was due to granting Jay Paul Company's request. Paul stated he would accept that proposal; however, he thinks it would be more reasonable to some type of cap on the cost. Paul explained that Jay Paul Company has paid the City \$20 million in fees so far for this project. Paul stated he supports making a contribution toward some potential cost, but it should be a nominal allocation. Paul explained the basis of whatever contention there might be this would be the least reasonable thing to try and argue.

Councilmember Moylan explained that it is important that City is made whole if Council grants this unusual request. The city attorney worked very closely on this report and he may have another alternative he would accept which Council could consider.

Paul stated he still prefers a cap is put on his financial responsibilities should any litigation arise. Paul stated it would be difficult to decipher what portion of any litigation would be his responsibility.

Vice Mayor Hamilton explained that it does not cost the City anything to hold on to the H Street Reservation. Vice Mayor Hamilton stated if the City winds up in litigation for any reason, the City would have no idea of the cost involved. Vice Mayor Hamilton stated Paul is not making a persuasive argument as to why Council should approve a cap on his financial responsibility. Vice Mayor Hamilton asked Paul why the City should assume any risk.

Paul stated it will be difficult to allocate any litigation and he is just suggesting a fair way to handle possible future litigation. Paul stated he is asking for consideration from the City and pointed out that his company has made a substantial contribution to the City. Vice Mayor Hamilton stated the City's consideration would be the release of the reservation and that Paul would assume the risk of releasing the consideration. Paul stated he is prepared to assume that risk if that is Council's decision.

Mayor Spitaleri confirmed with City Attorney Kahn that if the reservation is released and then the Mary Avenue Extension is challenged, it is possible that this project may not be part of the challenge to the final EIR. Mayor Spitaleri questioned if Paul would be named as part of a lawsuit against Mary Avenue and City Attorney Kahn stated the City would be named as the defendant in the lawsuit and the release of the H Street Reservation would be part of that litigation. City Attorney Kahn further explained that the City would have to defend that reservation as part of any litigation. The risk of the H Street Reservation becoming part of any litigation would be less if Council elected to wait until the EIR is certified. Should Council elect to release the reservation at this time, City Attorney Kahn stated it would be appropriate for Paul to share in the risk that H Street would be involved in any future litigation.

Paul inquired if City Attorney Kahn is including Paul in sharing the legal fees only. City Attorney Kahn stated there is another part of the risk sharing equation, as noted in the staff report. City Attorney Kahn explained that the original design agreement in 1985 contained a commitment from Lockheed to pay \$1.1 million in costs toward the Mary Avenue extension if and when it was eventually built and if the reservation was accepted. City Attorney Kahn stated staff has been having ongoing discussions with Lockheed and it is the City's position that if the H street reservation is released and another alternative is used for the Mary Avenue extension, then Lockheed still might be responsible to pay the \$1.1 million (minus what they have already paid toward the EIR) per the design agreement. City Attorney Kahn stated Lockheed is continuing to contest this and it is not resolved. City Attorney Kahn stated if the only reason Lockheed was able to get out of their commitment was due to the early release of the H Street Reservation, then that would be something the City would consider as covered by the indemnification clause with Jay Paul Company. However, should Lockheed be successful in not having to honor their obligation because of reasons other than the H Street Reservation, then it would not be the responsibility of the Jay Paul Company.

Paul stated he has no problem paying the legal fees but it would be unfair if he is required to make Lockheed's payment, should they do not stand by their obligation.

Vice Mayor Hamilton inquired as to why the reservation agreement did not transfer to Paul when he bought the property from Lockheed. A member of the Jay Paul Company stated that when they bought the property, the agreement with the City was a completely separate obligation to the City.

Councilmember Moylan stated the issue appears to be that if the Council approves the early release of the reservation and Lockheed prevails in litigation, then the cost of the project to the City would increase; however, the City could possibly have saved this potential expense

by not releasing the reservation early. City Attorney Kahn clarified that Lockheed would likely use the same argument that they are not obligated to pay regardless of an early release of the H Street Reservation. City Attorney Kahn further explained that his concern is that the City would be taking a risk should Lockheed be successful in contesting their obligation to pay based on the current release of the reservation as opposed to after the conclusion of the FEIR.

Councilmember Moylan stated he understands that there is risk whether or not the reservation is released now or after the conclusion of the FEIR. Councilmember Moylan confirmed with City Attorney Kahn that in exchange for early release of this reservation, the City is asking Paul for indemnification against any loss due to releasing the reservation early.

Paul stated he would rather not pay the fee and it is his opinion that they have paid their share of fees to the City.

Glenn Hendricks, member of the Personnel Board, speaking on his own behalf, stated he recommends Council approve Alternative 3, which would not release the reservation. Hendricks does not understand why the release of this reservation would make it easier for Paul to conduct his tenant transactions. Hendricks questioned why this would be a benefit for Paul or the City.

Vice Mayor Hamilton stated page two of the staff report identifies what Paul explained as his reason for a need to have the reservation released. The request from Paul alleges that his prospective tenants will not conclude lease negotiations until the H Street Reservation is released or selected. A member of the Jay Paul Company further explained that the City will not release an occupancy permit for the building unless the reservation is released.

Mark Kaminsky stated if Lockheed prevails and does not have to pay, what mechanism would be in place so the City would know that Lockheed prevailed because of the early reservation release. Kaminsky stated there does not seem to be an obvious answer.

Public hearing closed at 9:31 p.m.

MOTION: Councilmember Swegles moved, and Councilmember Lee seconded, approval of Alternative 2: Council releases and rejects the H Street Reservation, based on a finding that the H Street Reservation alignment alternative cannot achieve project objectives at a reduced environmental cost, but conditioned on the Jay Paul Company agreeing to hold harmless and indemnify the City from any additional costs or financial impacts to the City arising from the release of the H Street Reservation prior to the certification of the Final EIR.

Councilmember Lee stated he wanted to make it clear that this vote has nothing to do with whether the Mary Avenue overpass will be built or not.

VOTE: 7-0

5. RTC 08-042 Roadway Reconfiguration Guidelines for Retrofitting Streets with Bike Lanes (Originally Titled Policy for *Allocation of Street Space*) – Study Issue

Transportation and Traffic Manager Witthaus presented the staff report.

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Vice Mayor Hamilton confirmed with Manager Witthaus that Evelyn Avenue (east of Fair Oaks) is a street that would meet the minimum requirements.

Vice Mayor Hamilton confirmed that staff would be looking at providing bike facilities on all major arterial and collector streets.

Public hearing opened at 9:47 p.m.

Kevin Jackson, Chair of the Bicycle and Pedestrian Advisory Commission, gave a visual presentation on roadways and bikes. Jackson talked about the changes that would be needed to increase non-motorized transit.

Councilmember Whittum stated he understood that the chair of a board or commission could speak for 10 minutes. Mayor Spitaleri stated the chair could speak for 10 minutes if they disagree with the staff recommendation which did not occur. Mayor Spitaleri stated Jackson has the right to come back if new information is presented. Kevin Jackson was stopped at three minutes.

Councilmember Whittum stated he thought the chair would receive 10 minutes. Councilmember Moylan stated 10 minutes was never mentioned in the policy that Council approved at the January 29, 2008, Council meeting. Councilmember Moylan explained that the policy states that the mayor may grant additional time if the chair disagrees with staff's recommendation, but there was not a fixed allowance of time. Councilmember Moylan identified that the mayor did not approve additional time for the chair.

Councilmember Whittum stated a concern that on-street parking would be removed if this policy were adopted. Jackson stated nothing in the policy is a strict rule; rather it guides the staff recommendations to putting safety for roadway users first. Jackson stated the policy would make everyone justify their needs including the need for on-street parking. The decisions would be made by Council rather than at a staff level. Jackson explained there is nothing coercive about the policy; rather it is making more information available to the Council.

Councilmember Whittum stated he is aware there are areas where on-street parking could be removed and other areas where it is needed. Councilmember Whittum asked Jackson how the case-by-case basis would be observed under this policy. Jackson stated it would involve conducting surveys of the on- and off-street supply and demand along with public hearings. Jackson stated all that information would then go to Council.

Vice Mayor Hamilton confirmed with Jackson that a wide curb lane is sufficient where a bike lane is not feasible, such as a residential street. Jackson stated the width of a wide curb lane is 14 feet as opposed to 16 feet. Jackson explained that the commission is attempting to change the policies for collector and arterial streets because the current policies have been supporting putting in bike accommodations where it is easy to do so and not where it is needed.

Vice Mayor Hamilton inquired how this would be different than what Council does currently and Jackson stated currently staff obtains negative public feedback and makes changes from that without obtaining any analysis or justifications for the change.

Vice Mayor Hamilton inquired what Jackson would consider to be ample off-street parking.

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Jackson stated that would depend on the survey that was done for that area.

Councilmember Lee inquired what Jackson thought could be softened in the policy so as to obtain staff's approval. Jackson stated staff seems to be concerned with prejudging situations and he finds that safe car access is always a prejudged outcome of every road project. Jackson stated this really does not make sense as Council makes the final decision.

Councilmember Lee asked staff where the biggest issue is in the policy for staff. Director Rose stated the biggest issue is on page 1 of Attachment B, "Historical precedence for street space dedicated for parking is not a consideration when determining the appropriate future use of street space for transport." Director Rose stated this statement is the primary factor under which staff recommended not approving this policy. It removes an important option for staff to consider and evaluate. Director Rose stated staff is recommending that all alternatives are evaluated and that a recommendation is provide to Council. Director Rose explained that staff does perform the analysis methods that Jackson mentioned when conflicts between transportation modes exist.

Witthaus stated the policy statement on page 2 of Attachment B, "Safety considerations of all modes shall take priority over capacity considerations of any one mode" causes concern from staff. Witthaus stated there are streets in which the only way to improve accommodations would be to eliminate a travel lane or a turn lane on a major street which would cause significant traffic congestion. Witthaus stated roadway congestion has to be taken into consideration when looking at retrofitting existing streets.

Councilmember Lee inquired if Jackson would accept the removal of the two items mentioned by staff from the policy. Jackson stated whatever the Council feels comfortable with is acceptable to the commission. Jackson stated the commission's concern is to have a bike route network that citizens can rely on safely and which meets their transportation needs.

Glenn Hendricks, member of the Personnel Board, speaking on his own behalf, stated he recommends Council approve staff recommendation to approve Alternatives 2 and 3. Hendricks stated his concern is over Attachment B, the statement that "parking is the storage of transportation vehicles and shall not be considered a transport use" because it can be applied to any street to stop street parking.

Patrick Grant, member of the Bicycle and Pedestrian Advisory Commission, stated he had an overhead to share with Council. Councilmember Moylan stated he is aware everyone is attempting to get used to the new policy; however, the revisions Council made do not allow multiple members of the board or commission (other than the chair or chair's designee) to take up public hearing time unless Council does not have detailed minutes of their meeting. Councilmember Moylan explained that Council does currently have extremely detailed minutes and the chair had extended time to speak. Grant asked if he would be allowed to speak and Councilmember Moylan stated he will leave that up to the mayor. Grant stated he wanted to speak and would resign from his position as commissioner if that was what it would take to speak. Mayor Spitaleri questioned if Grant was formally resigning and Grant stated if in order to speak he must resign, then he will resign in order to obtain a right to speak. Grant stated that is the only way he will be able to speak to Council about information that the chair could not present. Grant stated he resigned and made his presentation as a member of the community.

Grant stated reasons for instituting the BPAC policy and cited the City's need to reduce

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vehicle traffic and encourage alternate transportation.

Linda Eaton stated she would like Council to support the BPAC policy for safe accommodations for bicycles and pedestrians on all streets in Sunnyvale. Eaton stated access for all modes of transportation should be a part of all new developments.

Mark Kaminsky stated, as a bicyclist, riding in a bike lane is unsafe. Kaminsky stated the City has not kept up with maintenance of the bike lanes. All the road debris is pushed into the bike lane causing bikes to have to ride outside of the bike lanes in several locations. Kaminsky stated bike lanes are not the answer to bicyclist safety as the bike lanes are not maintained. Kaminsky stated wider lanes are a better solution for bicyclists and motorist consideration.

Cathy Switzer explained that she is an active bicyclist and has concerns over the area of Fair Oaks and Highway 101. Switzer stated she rides through Mountain View because it is safer for her to ride there than Sunnyvale. Switzer urged Council to make Sunnyvale safer by approving the BPAC policy.

Jackson noted that no public opposition was received. Jackson stated the commission supports Alternatives 1 and 3. Jackson stated if Council wishes to make compromises, he would like the opportunity to have a discussion with Council.

Councilmember Whittum stated he has concerns with the BPAC policy and questioned if Jackson would find value in Council returning the policy to BPAC and asking the commission to work with staff on revising the policy. Jackson stated that was a possibility as this is a long-term solution to a long-term problem and it is important to get it right.

Public hearing closed at 10:37 p.m.

MOTION: Councilmember Moylan moved, and Councilmember Lee seconded, to approve Alternative 1 with modifications: Council approves the policy on allocation of street space and directs staff to prepare a General Plan amendment to incorporate the proposed street allocation policies into the Land Use and Transportation Element of the General Plan **with** modification to paragraph 5 on the first page of Attachment B to read as: Historical precedence for street space dedicated for parking **shall be a lower priority** when determining the appropriate future use of street space for transport. **with** modification to paragraph 4 on the second page of Attachment B to read as: **All else being equal**, safety considerations of all modes shall take priority over capacity considerations of any one mode.

Councilmember Moylan explained that staff would not be expected to make a 1 percent improvement in safety for an 80 percent decrease in capacity.

Councilmember Moylan stated there is no reason to remove the statement that parking is not a transport use because that is entirely true. Councilmember Moylan explained that the policy does not state that all parking would be illegal or that all street parking would vanish. The policy instead represents that using the road should be a higher priority than storing vehicles on it, which is the heart of what BPAC is representing to Council.

Councilmember Whittum stated he will vote against the motion because he does not agree with the statement in the policy regarding transport uses being met before non-transport uses are considered. That statement alone will eliminate parking on many streets without staff to

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have any discretion in the matter. Councilmember Whittum stated he recommends Council suggest revisions and that those revisions go back with the policy to staff and BPAC for further consideration.

Vice Mayor Hamilton stated she will not support the motion because there is no place to leave a car other than a street. Over the years, citizens have come to expect to have street parking. Vice Mayor Hamilton stated she resents the comments from BPAC that the City is not taking safety into account when roadways are originally designed. Vice Mayor Hamilton stated she does not see how this policy would add anything to the City's process but after hearing the comments, she is in support of sending this back to BPAC for modifications. Vice Mayor Hamilton stated she would recommend removing the parking items and also including more provisions about pedestrians.

Councilmember Lee offered a friendly amendment to change paragraph 6 on the first page to read as: On-street parking shall not be considered as **a primary** means to meet City parking requirement for private development.

Councilmember Moylan accepted the friendly amendment.

Councilmember Moylan stated he wished to clarify his motion. Councilmember Moylan referred to page 4 of the staff report in which staff identified that the BPAC policy would place safe accommodation of transport modes essentially as a primary priority and walking is included as a transportation mode. Councilmember Moylan stated pedestrians are also included in the first paragraph of Attachment B. Councilmember Moylan stated he wanted to make clear that the intent of the motion is that all transportation modes should be given priority over storage modes or landscaping. The use of streets for mobility should be given a higher priority than the use of the streets for things that block them. Councilmember Moylan stated that his motion also is not meant to remove all street parking.

Councilmember Swegles stated he agrees with Councilmember Whittum in that there are items in the policy that need to be ironed out and that it would be best to return this policy to both BPAC and staff so that they may work on finding a compromise for everyone.

Restated MOTION: Councilmember Moylan moved, and Councilmember Lee seconded, to approve Alternative 1 with modifications: Council approves the policy on allocation of street space and directs staff to prepare a General Plan Amendment to incorporate the proposed street allocation policies into the Land Use and Transportation Element of the General Plan **with** modification to paragraph 5 on the first page of Attachment B to read as: Historical precedence for street space dedicated for parking **shall be a lower priority** when determining the appropriate future use of street space for transport.
with modification to paragraph 4 on the second page of Attachment B to read as: **All else being equal**, safety considerations of all modes shall take priority over capacity considerations of any one mode
with modification to paragraph 6 on the first page of Attachment B to read as: On-street parking shall not be considered as **a primary** means to meet City parking requirement for private development

VOTE: 3-4 (Councilmember Howe, Vice Mayor Hamilton, Councilmembers Swegles and Whittum dissented)

MOTION: Councilmember Whittum moved and Councilmember Swegles seconded to refer

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this policy back to the BPAC and staff to work out wording changes based on Council's discussion this evening.

VOTE : 7-0

7. RTC 08-044 Webcasting City Meetings and Approval of Budget Modification No. 32

Principal Programmer Analyst Helen Kwan presented the staff report.

Councilmember Whittum confirmed that staff costs (for 2.5 of staff time) for software implementation is included in the cost listed in Alternative 2.

Public hearing opened at 10:52 p.m.

Jim Griffith, chair of the Library Board of Trustees, speaking on his own behalf, stated he is concerned over how Webcasting would affect the current dialogue between commission members as the commission is quite blunt and that frankness might not exist if the meetings were Webcast. Griffith questioned whether all board and commissions need to be Webcast. Griffith stated the demand is clearly in place for Council and the Planning Commission, but he is not sure it would be the same for the other commissions. Griffith stated he supports Alternative 1 and spoke of scheduling conflicts if all boards and commissions were webcast.

Public hearing closed at 10:55 p.m.

Councilmember Whittum confirmed with Kwan that it would be possible to monitor the amount of board and commission meeting viewers for a year, at which time staff could evaluate the data to see if Webcasting should continue.

MOTION: Vice Mayor Hamilton moved, and Councilmember Lee seconded, to approve Alternative 1: Council directs staff to proceed with the implementation of Webcasting City Council and Planning Commission meetings and approves Budget Modification No. 32 to accept \$25,000 in revenue from the Comcast Technology Grant. Staff will then initiate a contract with Granicus, inc. in the amount of \$31,035 under the city manager's contract award authority of \$50,000.

Vice Mayor Hamilton stated her support of Webcasting as it will allow more citizens to view the Council meetings in addition to those who live outside Sunnyvale will also be able to watch the meetings. Vice Mayor Hamilton stated she did not select webcasting for all board and commission meetings because the cost was more than double. Vice Mayor Hamilton stated the two meetings that are currently broadcast is a good starting point for webcasting and the boards and commissions can always be added at a later date.

Councilmember Lee stated this is something that should have happened years ago and is very important for open government. Councilmember Lee stated easily accessing meetings at a later date is an important component of Webcasting and it also enhances the public's ability to view Council meetings.

VOTE: 7-0

8. RTC 08-041 Appointment of Council Sub-Committee-Public Campaign Financing

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City Attorney Kahn presented the staff report.

Public hearing opened at 11:01 p.m.

No speakers.

Public hearing closed at 11:01 p.m.

Vice Mayor Hamilton stated she had a suggestion for appointment to this sub-committee. Vice Mayor Hamilton explained that there are four Councilmembers who are term-limited and will not be doing anymore campaign fundraising in the City. One of the four Councilmembers is currently running for another office so that leaves three Councilmembers who would not have a conflict of interest.

Councilmember Lee suggested that individual Councilmembers express whether they are interested in a position on this sub-committee.

Councilmember Moylan stated he agrees with Councilmember Lee and proceeded to express his interest in serving on this sub-committee.

Councilmember Lee expressed interest in serving on this sub-committee.

Councilmember Whittum expressed his interest in serving on this sub-committee.

Councilmember Moylan stated it is important to have the Councilmembers who are interested in studying public financing serve on this sub-committee.

Councilmember Swegles and Howe expressed an interest in serving on the sub-committee.

Councilmember Lee suggested that the random way to select the members would be to throw names in a hat and then select three Councilmembers who will serve on the sub-committee.

Councilmember Moylan suggested rather than toss names in a hat, those interested should state why they are interested in serving.

Councilmember Whittum explained his interest in serving included that he believes it is possible to mount a viable campaign without spending too much, and it is important to educate residents so they understand the process.

Councilmember Swegles stated he is knowledgeable of the senior perspective on this issue which can help give a balance to discussion on this topic. Councilmember Swegles stated he has also talked extensively with the representatives from the *Clean Money* organization.

Councilmember Lee stated he has a strong interest in public campaign financing in various ways. Councilmember Lee stated this is an issue that should not be rushed. Councilmember Lee stated since he is a candidate for another office, he is able to offer the challenges he is facing trying to meet the cap given by the county.

Councilmember Howe stated he changed his mind and is not interested in serving on this sub-committee. Councilmember Howe stated he would like to point out that no cost is listed for staff time (or any other items) in the staff alternatives.

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Councilmember Moylan stated he put a lot of time in on this project last year and he feels a sense of unfinished business. Councilmember Moylan stated he would prefer that the mayor select three Councilmembers as opposed to throwing names in a hat.

City Attorney Kahn stated that previously Council approved a motion to have Council select the sub-committee members. In order to have the mayor select the members, another motion would need to be made this evening that would allow the mayor to make the selection. City Attorney Kahn stated the other option would be for the mayor to recommend the members and have Council vote on that recommendation.

Mayor Spitaleri stated that he would make recommendations.

Councilmember Howe stated he wished to move these items along and he moved to have the mayor select the three members of the sub-committee.

MOTION: Councilmember Howe moved, and Councilmember Moylan seconded, to have the mayor appoint the three members of the Council Sub-committee on Public Campaign Financing.

VOTE: 7-0

Mayor Spitaleri appointed Councilmembers Swegles, Lee and Moylan to the Council Sub-Committee on Public Campaign Financing.

NON-AGENDA ITEMS & COMMENTS

Council Councilmember Swegles thanked his colleagues, the mayor and vice mayor and staff for their support in the recent loss of his father.

Mayor Spitaleri announced he recently awarded a certificate on behalf of the City of Sunnyvale to a young resident who achieved the rank of Eagle Scout. Mayor Spitaleri applauded the dedication it takes to receive this ranking. Mayor Spitaleri stated it was great to have a Homestead High student achieve this award and represent the City of Sunnyvale.

Staff None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- 08-043 Revisions to Council Policy 7.2.19 Boards and Commissions
- 08-045 Opportunity for Council to Appeal Decisions of the Planning Commission Meeting of January 28, 2008, and the Administrative Hearing of January 30, 2008

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting at 11:15 p.m. to the Onizuka Local Redevelopment Authority.

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Gail T. Borkowski
City Clerk

Date

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